

Exhibit B

(Transcript of April 26, 2022 Telephonic Status Conference)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

SC STATE CONFERENCE OF THE)	
NAACP & TAIWAN SCOTT,)	
Plaintiffs,)	April 26, 2022
)	
-versus-)	3:21-3302
)	
THOMAS C. ALEXANDER, LUKE A.)	Charleston, SC
RANKIN, JAMES H. LUCAS, CHRIS)	
MURPHY, WALLACE H. JORDAN,)	
HOWARD KNAPP, JOHN WELLS,)	
JOANNE DAY, CLIFFORD J. ELDER,)	
LINDA McCALL, SCOTT MOSELEY,)	
Defendants.)	

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE

BEFORE THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE
THE HONORABLE MARGARET B. SEYMOUR
SENIOR UNITED STATES DISTRICT JUDGE
THE HONORABLE TOBY J. HEYTENS
UNITED STATES APPELLATE JUDGE

A P P E A R A N C E S:

For the Plaintiffs: CHRISTOPHER J. BRYANT, ESQ.
Burroughs Bryant LLC
1122 Lady Street, Suite 208
Columbia, SC 29201

JOHN M. HINDLEY, ESQ.
JOHN A. FREEDMAN, ESQ.
Arnold and Porter Kaye Scholer LLP
601 Massachusetts Avenue NW
Washington, DC 20001

JOHN CUSICK, ESQ.
LEAH C. ADEN, ESQ.
NAACP Legal Defense and Educational
Fund Inc.
40th Rector Street, 5th Floor
New York, NY 10006

D. ALLEN CHANEY, JR., ESQ.
ACLU of South Carolina
1220 Laurens Road, Suite B
Greenville, SC 29607

ADRIEL I. CEPEDA DERIEUX, ESQ.
ACLU Foundation
125 Broad Street, 18th Floor
New York, NY 10004

PATRICIA YAN, ESQ.
ACLU Foundation Inc.
915 15th Street NW
Washington DC 20005

For Defendants Alexander and Rankin:

ROBERT E. TYSON, JR., ESQ.
Robinson Gray Stepp and Laffitte LLC
1310 Gadsden Street
Columbia, SC 29201

JOHN M. GORE, ESQ.
Jones Day
51 Louisiana Avenue NW
Washington, DC 20001

For Defendants Lucas, Murphy and Jordan:

ANDREW A. MATHIAS, ESQ.
KONSTANTINE P. DIAMADUROS, ESQ.
Nexsen Pruet
PO Box 10648
Greenville, SC 29603

MARK C. MOORE, ESQ.
HAMILTON B. BARBER, ESQ.
MICHAEL A. PARENTE, ESQ.
Nexsen Pruet
PO Box 2426
Columbia, SC 29202

For Defendants Knapp, Wells, Day, Elder, McCall & Moseley:

JANE W. TRINKLEY
Burr and Forman LLP
PO Box 11390
Columbia, SC 29211

Court Reporter: KAREN E. MARTIN, RMR, CRR
PO Box 835
Charleston, SC 29402

Proceedings reported by stenographic court reporter.
Transcript produced with computer-aided transcription
software.

1 Tuesday, April 26, 2022

2 (WHEREUPON, court was called to order at 1:00 PM)

3 JUDGE HEYTENS: Good afternoon. This is Judge
4 Heytens. I'm going to ask if Judge Gergel and Judge
5 Seymour are on the line?

6 JUDGE SEYMOUR: Yes, this is Judge Seymour. I'm
7 on the line.

8 JUDGE GERGEL: Yes, I am on the line.

9 JUDGE HEYTENS: Good afternoon, everyone. As I
10 said this is Judge Heytens. Judge Gergel and Judge
11 Seymour are also on the line. We are on the record in the
12 case of the SC NAACP vs. Alexander, Civil Action
13 No. 21-3302 for a status conference.

14 I'd like to start with some very brief framing
15 remarks before we move into the status conference itself.
16 It seems very apparent to me that the parties very much
17 want to avoid doing two different things in this case.
18 One, it is apparent that the parties are not looking
19 forward to trying this case. And second, it appears that
20 they don't want to just pass a new map. If that is true,
21 then as the panel has already said, we think that several
22 things at minimum would have to happen to avoid either of
23 those two things happening if there's a chance of doing
24 that. The panel is of the view, as the panel's already
25 said, that it would require the consent of the governor,

1 the attorney general, or both rather than simply a
2 representation by the parties that those individuals don't
3 oppose.

4 Second, as the panel has already explained, we
5 think it would require more fulsome consent of both the
6 House and the Senate than the letters that have currently
7 been provided.

8 And then last but not least, as the panel
9 indicated in its order, there would have to be a showing
10 to permit the Court to make a finding that the settlement
11 proposal itself complies with the equal protection clause.
12 Because if this were to be a consent decree, the panel
13 would have to make such a finding in order to enter it.

14 But as of now and pending any further
15 developments, trial as the panel has indicated is still on
16 for Monday the 16th of May.

17 Judge Seymour, do you have anything to add by
18 way of framing us up?

19 **JUDGE SEYMOUR:** I don't have anything to add and
20 I agree with you. Thank you.

21 **JUDGE HEYTENS:** Judge Gergel, do you have
22 anything to add?

23 **JUDGE GERGEL:** I don't. I agree with what
24 you've just said Judge Heytens.

25 **JUDGE HEYTENS:** Terrific. With that in mind,

1 I'm going to follow the course from our previous wannabes
2 and turn it over to Judge Gergel for him to conduct the
3 remainder of our conversation this afternoon.

4 **JUDGE GERGEL:** Very good. Good afternoon,
5 everyone. In our -- I want to remind folks, and I think
6 we did this fairly early on, we will have having a status
7 conference in this case on the Friday before the Monday
8 trial, that's May 13th. Since I know folks will probably
9 be using a fair amount of technology, I urge y'all to come
10 and we'll have the courtroom available for you to get
11 everything up and running. My staff will be there to
12 assist. Sometimes there are computer challenges when
13 you're using the court system. And we'll work with you on
14 that. But we'll do that at 10 a.m.

15 And I think last week we entered a text order
16 extending discovery until Friday. That was -- that had
17 been requested jointly when the parties -- counsel met
18 with me, the House parties met with me and asked would it
19 be okay to have another week.

20 Let me just ask Mr. Moore and Mr. Bryant, is
21 that time sufficient? Do you need anymore time, another
22 few days?

23 **MR. MOORE:** Judge, this is Mark Moore for the
24 House Defendants. I believe that we would need at least
25 another week to complete discovery. We have talked and we

1 have tentatively scheduled some depositions this week.
2 But I think that we would need another week to conduct
3 discovery.

4 And I would tell the Court that there are a
5 couple discovery issues that have come up which we started
6 working through. We paused that in order to take
7 advantage of trying to resolve this case. And if at any
8 point the Court is willing to hear us on that issue, we'd
9 be glad to speak on it. But I would say that at a
10 minimum, we would need an additional week for discovery.

11 **JUDGE GERGEL:** Okay. So you're asking --
12 basically, we were having it through the 22nd. You're
13 asking to go to the 29th?

14 **MR. MOORE:** Actually, Judge, I think it went
15 through the 29th. If the discovery was originally
16 scheduled to close --

17 **JUDGE GERGEL:** I've got you. You're absolutely
18 right. Yes. So you're asking to go to the 6th?

19 **MR. MOORE:** That is my ask. And I don't know
20 what my colleagues from the plaintiff's side, what their
21 position is. I do think that they want additional time
22 for discovery. We had both also talked about asking the
23 Court for perhaps a brief -- you know, perhaps a move of
24 the trial date into June. I don't know if the Court's
25 willing to --

1 JUDGE GERGEL: We're not --

2 Judge Heytens, I don't think we're inclined to
3 do that, are we?

4 JUDGE HEYTENS: I'm certainly not inclined to do
5 it. And I understand my panelists are not inclined to do
6 it either; is that correct?

7 JUDGE SEYMOUR: That's correct.

8 JUDGE GERGEL: That's correct.

9 So I think we're on May 16th. So, you know, the
10 only challenge is there are certain dispositive motions
11 that are due before then. But, folks, this case is not
12 going away by dispositive motions. I mean, there are
13 going to be factual issues that need to -- that, you know,
14 we're going to need to try. So what do y'all propose in
15 terms of dispositive motions, if you're going to move the
16 thing to the 6th? Mr. Moore?

17 MR. MOORE: Judge, if you could give us until
18 the 13th for dispositive motions? You know, I heard the
19 panel early on back in December of last year when you told
20 us that while we would -- we could file motions to dismiss
21 and final motions for summary judgment that those would
22 unlikely be granted. We would just need time to file them
23 for purposes of the record. I understand that the Court
24 may not be able to give us a decision. So the 13th or
25 even the 12th is what I would propose.

1 JUDGE GERGEL: Yeah.

2 Mr. Bryant, what's the plaintiff's view?

3 MR. BRYANT: Judge, the plaintiffs would echo,
4 you know, at least that week for additional discovery.
5 I'm going to pass it to my colleague, John Freedman, to
6 discuss some of the outstanding discovery issues.

7 JUDGE GERGEL: Okay. Well, we're not ready to
8 go to the discovery --

9 MR. BRYANT: I'm sorry, Judge. Not the
10 discovery issues themselves, but sort of the need for time
11 and what has been scheduled.

12 JUDGE GERGEL: Very good.

13 Mr. Freedman?

14 MR. FREEDMAN: Thank you, Your Honor. John
15 Freedman for the plaintiffs. So in terms of outstanding
16 discovery from the plaintiff's end, when we suspended
17 there were six depositions that we needed to take. We got
18 dates from the defendant's for two of them. One Friday,
19 one next Monday, and still waiting for dates of the last
20 four. That includes senior -- named defendants or senior
21 members of the House including Speaker Lucas. So those
22 need to be done.

23 In addition, there was some outstanding
24 discovery issues, the most important of which is
25 defendant's compliance with Paragraph 4 of the April 13th

1 order in terms of the supplemental productions from
2 personal emails, text messages. Assuming all that can get
3 done between now and May 6th, May 6th sounds fine as a
4 discovery cutoff.

5 I think as far as the dispositive motions
6 deadline, I think it's safe to say the plaintiffs are not
7 planning to file dispositive motions. We are
8 contemplating filing certain in limine motions. And do
9 believe that some adjustment on the schedule would be
10 helpful recognizing the Court is going to need time to
11 analyze those and rule on them at or before the start of
12 the trial.

13 **JUDGE GERGEL:** Yeah. Mr. Freedman, I always try
14 to remind lawyers when you have a panel -- a bench trial
15 as a posed to a jury trial, motions in limine are not so
16 critical, you know, I mean, frankly. But if you've got
17 substantive motions in limine, what's the nature of those
18 motions?

19 **MR. FREEDMAN:** They are largely by nature of
20 preclusion, Your Honor, where the defendants didn't turn
21 over certain information in discovery, or have not
22 stipulated things in discovery, or if certain explanations
23 for the map weren't contemporaneously raised in the
24 legislative record. I hear what Your Honor's saying about
25 the point of this with a bench trial. But I still think

1 in terms of framing trial presentation, getting some
2 guidance from the Court --

3 **JUDGE GERGEL:** Yeah. I mean, if you've got
4 motions in limine, you need to go ahead and give us --
5 those that are ripe right now, just go ahead and file
6 them. I mean, you know, if you pile everything on us at
7 the last moment, you know, it's just very hard to process
8 it in a way that makes any sense. So if you're going to
9 make a motion in limine, you have motions in limine, I
10 would say you do those by May 9. And if something arises
11 after that, you can ask us, you know, if there's some good
12 cause for not meeting that deadline.

13 And then for, you know, the motion for summary
14 judgment, I think we've got to do that by the 11th. We've
15 got to at least be able to look at it and have a response
16 from opposing parties, you know. So I would say May 11th
17 and just turn it around in 24 hours and May 12th for
18 response.

19 And I say that, I understand why the defendants
20 would want to make the motion. I think it's a legitimate
21 kind of point. I just think we all know that there are
22 material factual disputes that we need to resolve. But I
23 want to -- I know I want to afford them the right to file
24 it. And some of it may be actually something they're
25 teeing up for basically argument in the case. And I think

1 it's legitimate to raise those things.

2 So we will do the motion in limine, anything by
3 May 9. And the motion for summary judgment by 11. On the
4 motion in limine, I want a response by the 10th.

5 Folks, don't overdo it. Don't over-nitpick this
6 thing. We're three judges. We're not going to be blown
7 away by something that arguably isn't admissible. You can
8 just raise an objection to it. Don't spend a lot of time
9 pouring over insignificant matters that you can raise
10 objection to at trial.

11 The -- there was a mention of getting these four
12 depositions scheduled within the time provided to the 6th.
13 Mr. Moore, is there going to be any problem getting those
14 other four depositions scheduled?

15 **MR. MOORE:** No, sir, Your Honor, there's not.
16 There are also two other depositions that Mr. Freedman did
17 not mention that we had noticed that we are tentatively
18 scheduling this week.

19 **JUDGE GERGEL:** Okay. Okay. Now, Mr. Moore, you
20 told me there are some discovery issues. What -- not
21 getting into details, because we're not going to argue
22 them, I'm going to make you to file something, tell me the
23 nature of what the issue is.

24 **MR. MOORE:** Well, so from our perspective, there
25 is an issue about the adequacy of the collection from the

1 Plaintiff South Carolina Conference -- South Carolina
2 State Conference of the NAACP of the emails from various
3 email boxes. That's the primary issue. That collection
4 deficiency was discovered in a Rule 30(b)(6) deposition of
5 President Murphy right before -- I guess at the end of --
6 not at the end of last week but the end of the previous
7 week.

8 JUDGE GERGEL: You said collection, there are
9 emails that you think are relevant that haven't been
10 produced?

11 MR. MOORE: That is correct, Your Honor.

12 JUDGE GERGEL: Okay.

13 And Mr. Freedman, who wants to respond? Without
14 getting into a lot of detail, tell me is there an issue
15 about that?

16 MR. FREEDMAN: So, Your Honor, John Freedman for
17 the plaintiffs. News to me. Not previously raised, not
18 met and conferred on. I'm happy to meet and confer with
19 the defendants and understand what their issue is. And
20 I'm sure if there are documents they still -- documents
21 that they think we owe them, we're happy to make a
22 supplemental production.

23 JUDGE GERGEL: Okay. Here's what it is. I want
24 y'all to meet and confer immediately.

25 And Mr. Moore, if you're not -- if you're not

1 satisfied by that, I want you to file a motion on April 29
2 on these NAACP production. And then I want a response by
3 the plaintiff on May the 2nd. But y'all try to resolve
4 it. I mean --

5 (Indiscernible crosstalk.)

6 **MR. MOORE:** I'm sorry, Judge. I was going to
7 tell you, I don't think Mr. Freedman was on the call where
8 we had a -- where we began to have a discussion about it
9 or perhaps it's in the emails. But a number of the folks
10 on the plaintiff's side are well aware of the issue.

11 **JUDGE GERGEL:** Okay. Good. Just file it on the
12 29th. Y'all meet and confer. Try to resolve it. If you
13 can't resolve it, then you file it on the 29th. Plaintiff
14 will respond on the 2nd.

15 You both should have gotten the flavor that
16 we're going to make y'all produce the stuff. So, I mean,
17 unless there's a serious objection to the plaintiffs, just
18 go ahead and produce it. I mean, I've been through --
19 we're going to probably issue an order today or tomorrow
20 on this in camera stuff. There's just not much on
21 anybody's there. So y'all just go ahead and get it done
22 because y'all need to be spending your time getting ready
23 for trial and not on these issues that are, you know, in
24 my view largely unimportant.

25 **MR. BRYANT:** Judge Gergel, this is Chris Bryant

1 for plaintiffs. Plaintiffs also have an outstanding
2 discovery issue. So I guess when Mr. Moore said from our
3 side, there is a plaintiff's discovery issue. And I'm not
4 sure if you'd like us to briefly introduce that as well.

5 **JUDGE GERGEL:** Tell me just very briefly.
6 You're going to be on the same schedule of the 29th and
7 response by the 2nd.

8 **MR. BRYANT:** Okay. I assumed it was the same
9 schedule. Very briefly, you know, we had some discovery
10 requests that went out, you know, back in January
11 regarding individual involvement in the case, basically
12 identifying people involved with map drawing. And it did
13 not come out -- it -- I guess the best way to say it is
14 their -- the written discovery -- the written discovery
15 does not identify any Nexsen Pruet attorneys as being
16 involved. It did come out in depositions that took place
17 shortly before I guess we would say we took this pause
18 that there were attorneys -- you know, I think we asked
19 for people involved in evaluating, analyzing, et cetera,
20 the map and draft maps to sort of understand where they
21 came from. And so we did not understand and have not
22 received information I guess from those -- from those
23 attorneys. So that is the --

24 **JUDGE GERGEL:** You know, I'm never crazy about
25 efforts to make lawyers -- the lawyers the witnesses.

1 Okay? So take a hard look at them about relevancy here.
2 Because, you know, are you planning to put Nexsen Pruet
3 lawyers on the stand? I mean, come on.

4 **MR. BRYANT:** Your Honor, the deposition
5 testimony revealed that Nexsen Pruet attorneys were
6 substantively -- involved in substantive map drawing. And
7 that sort of goes to the crux of the matter in the case.
8 We don't know personally how, but throughout testimony of
9 individual legislators, you know, indicated direct
10 communications regarding substantive map drawing --

11 **JUDGE GERGEL:** Well, in the end, you know, y'all
12 are spending a lot of time on what other people did. The
13 maps are very important, folks. Okay? Look at the maps.
14 And I'm just -- I'm just going to start off with saying I
15 am reluctant to convert the lawyers into witnesses. I
16 mean, as a practical matter, you can't represent a party
17 where you are a material witness. So I've never been
18 crazy at efforts to convert attorneys of record into
19 witnesses. So if there's something there that's material,
20 fine. File your motion on the 29th. The House Defendants
21 can respond on May 2nd.

22 But I will start by saying, you know, the end
23 here is the maps. That's really the important thing. And
24 I agree, how they got there, you know, may be instructive.
25 But, um -- but I will just say a marked reluctance to

1 convert lawyers into witnesses on both sides, by the way.

2 **MR. MOORE:** And Judge Gergel, this is Mark
3 Moore. I hear Your Honor loud and clear. I think I heard
4 you at the last status conference on that issue. And when
5 we meet and confer with the plaintiffs, we will
6 converse -- we will meet and confer on all issues in hopes
7 that we can avoid the filing of motions from either side,
8 frankly. At the time that the plaintiffs first raised
9 that issue with us, we had not seen the deposition
10 transcripts of these two witnesses. I've seen one of them
11 now. I don't think I have the other. But I'm prepared to
12 have a substantive discussion with plaintiff's counsel in
13 hopes to resolve that issue.

14 **JUDGE GERGEL:** Thank you.

15 I mean, folks, I have all these so called new
16 discovery issues. None of them sound like they amount to
17 a lot one way or the other. You know, we've got to look
18 at these maps. What do the maps do? You know, that's
19 going to drive this. And surely there are details about
20 how the maps got there that would be relevant. But, you
21 know, in the end, you know, I presume the experts are
22 going to be very important in a determination whether race
23 was predominant. And if so, whether any remedy is
24 narrowly drawn to meet a compelling state interest. I
25 mean, that's sort of the gravamen of these cases.

1 Okay. Are there other matters that either
2 first, Mr. Bryant, you or Mr. Freedman need to raise with
3 the panel?

4 **MR. FREEDMAN:** Your Honor, John Freedman. Just
5 briefly. We are waiting for compliance on the Paragraph 4
6 of the April 13th order. If we can get a representation
7 from Mr. Moore when --

8 **JUDGE GERGEL:** Mr. Moore, how about Paragraph 4?

9 **MR. MOORE:** Well, Mr. Bryant and I talked about
10 that last week and we have the certifications. And we
11 believe that we have most of the collections in house. We
12 will get those documents out to plaintiffs as soon as
13 possible, well -- well before any deposition takes place
14 that might be affected by those productions and well
15 before the discovery deadline.

16 **JUDGE GERGEL:** Very good.

17 Okay. Mr. Freedman, does that satisfy you?

18 **MR. FREEDMAN:** The representation that we'll
19 have them before the depositions I think is sufficient,
20 yes.

21 **JUDGE GERGEL:** I thought it might be. Okay.
22 Anything else from the plaintiff that you need to raise
23 with me?

24 **MR. BRYANT:** Yes, Your Honor. Chris Bryant from
25 the plaintiffs. I guess one thing. We understood Judge

1 Heytens, you know, loud and clear at the beginning of this
2 status conference regarding the sufficiency or lack of
3 sufficiency of I guess what was needed from the Senate and
4 the House as far as consenting or a more fulsome consent I
5 believe were the words. Does the Court have direction --
6 I guess we're trying to figure out what -- what would make
7 that consent more --

8 **JUDGE GERGEL:** Let me say, we're not going to
9 issue an advisory opinion because a lot of times the devil
10 is in the details. But my colleague, Judge Seymour, has
11 asked the panel several times why don't they just pass a
12 new plan if they have consent? And I've thought that was
13 a pretty good point myself.

14 **MR. MOORE:** And Your Honor, do you want me to
15 try to answer that question?

16 **JUDGE GERGEL:** Well, I think I know the answer.
17 But I'm saying -- or, you know, there may be other ways to
18 manifest assent by the bodies. But, you know, Mr. Moore,
19 like you, I represented the legislative bodies. And I was
20 always taught that a body can only act through its
21 majority. And there needs to be some reflection, and
22 that, you know, one individual can't speak for the body.
23 And I understand there are issues we're late in the
24 session and all of that. I get that.

25 But, you know, we've got -- as Judge Heytens

1 said, we need a clear manifestation of the consent of the
2 bodies, not just one or two leaders of the body. And we
3 need an indication that an executive officer, which is
4 most logically here the governor, but could conceivably
5 under the state constitution be the attorney general comes
6 in and consents.

7 The case law makes it clear this is a
8 legislative -- this is not a plan of the House. This is a
9 plan of the State involving the House Redistricting. And
10 you can enter into consent decree, Lawyer teaches us that,
11 but under very strict standards. And since then, in Fouts
12 and in Benson and in Madditt (phonetic) and, you know,
13 we've taken the -- we read that case law carefully. And
14 we're not telling y'all you can't get the case settled,
15 you've just got to meet these standards. And you're not
16 there yet. And you might get there but you're not there
17 yet.

18 **MR. MOORE:** Your Honor?

19 **JUDGE GERGEL:** Yes?

20 **MR. MOORE:** And I know that the Court is loathe
21 to give us advisory opinions and we understand that
22 completely. And as Your Honors can tell, we're trying. I
23 wish that we had time to pass the maps. I don't think we
24 can. But I hear you loud and clear on what you would
25 expect from the two legislative chambers. And obviously,

1 the lawyers from the Senate are on this call. And we will
2 be talking to the lawyers for the Senate and we will be
3 talking to our clients immediately on that point.

4 When Your Honor raises the issue of an
5 executive's consent, and I just -- I want to just raise
6 this issue with the Court. The governor is no longer a
7 party to the action. My understanding is that the
8 governor does not -- from discussions that my client has
9 had with the governor's office, my understanding is that
10 the governor has no intention to object to the settlement,
11 no intention to proceed as an intervenor to try to stop
12 this. But he is no longer a party to the action and there
13 are issues concerning consent.

14 I also heard Your Honor loud and clear about the
15 attorney general. And we will be glad to try to explore
16 that issue. But I want to raise another issue. Because
17 the governor isn't in this case, the attorney general
18 isn't in this case, the State Election Commission is in
19 this case. And we've briefly spoken to the Election
20 Commission about this point. And they don't have an
21 answer for us yet on their position. But the State
22 Election Commission is empowered by statute with
23 conducting elections. They have a chairman that is a
24 chief administrative officer for the elections of this
25 state. And they are all appointed by the governor. So we

1 query whether it's possible that the State Election
2 Commission could be the executive to consent as they are a
3 party?

4 **JUDGE GERGEL:** The answer is they do not have
5 it. Just like in Benson, the Secretary of State in
6 Michigan didn't have that authority. She was the election
7 commissioner there.

8 You need to go get -- you know, what these cases
9 say, regardless of whether the governor is a party or the
10 attorney general has appeared, you can't modify -- this is
11 a legislative action. You need the players at the table
12 consenting. So saying I don't oppose it is not the
13 answer. You need to have an executive -- you know,
14 preferably, frankly, the governor. But there may be an
15 argument under the state constitution, the attorney
16 general could do this, to consent on behalf of the state.

17 But, you know, at this point you need -- you
18 know, I think the safer thing is to go to the governor and
19 just tell him that. I know legislative leaders can go to
20 the governor and speak to him about that. That's the
21 easier thing. But the simplest thing would be to pass the
22 plan and everybody sign it. There may be something short
23 of that that would work. But leaving the governor out is
24 not an option.

25 **MR. MOORE:** Thank you, Your Honor. I wanted to

1 raise that issue and I appreciate your --

2 **JUDGE GERGEL:** It's a fair question, Mr. Moore.
3 It is a fair question.

4 **MR. BRYANT:** Thank you, Your Honor. Chris
5 Bryant for plaintiff again. And just wanted to sort of,
6 in a statutory issue, the legislation -- you know, passing
7 this -- the map expressly empowers the Speaker and the
8 President of the Senate to sort of act on behalf of those
9 bodies. And I guess that is both in litigation and
10 related matters. And so that is, you know, instead of
11 having the majority, that's why we went this route.

12 **JUDGE GERGEL:** Yeah. I understand your view.
13 We read the language. You know, I'm very familiar with
14 authority language. It might be in a will. It might be
15 in a trust. It might be in a statute. And the omission
16 of the authority to settle is, to me, very notable. And,
17 you know, he does not have the authority. But he could go
18 and if he could -- if he could determine he has the assent
19 of his body that he gets that authority, that's fine. It
20 could be a joint resolution or an individual resolution of
21 the bodies. It could be something with a vote that would
22 make it clear. But, generally, having him say, well, I'm
23 the Speaker, I get to settle, I don't believe he has -- we
24 don't read the statute to give him that authority.

25 **MR. BRYANT:** Thank you, Your Honor.

1 **MR. MOORE:** And Your Honor, I don't want to try
2 to force patience. Here's a question that I feel like I
3 must ask. I take it the Court would not be inclined to
4 give us extra time just to try to accomplish those things,
5 to give us a litigation pause to try to accomplish that?
6 And if we can't accomplish it, we'd be able to give Your
7 Honor a quick answer. Is the Court willing to consider
8 that?

9 **JUDGE GERGEL:** No. You know, my experience
10 doing this job now for a dozen years, is that deadlines
11 have a way of helping resolve things. And if you can get
12 the authority -- the legislature is going to be gone in a
13 couple of weeks. They're either going to do it or not.
14 They can do it. You know, if there's a will, there's a
15 way to do this. If they actually have the support of the
16 body to do it, there is a way to do this. The fact that
17 they may not want to do it, prefer not to do it, I get
18 that. I do, I get that. But that's not the way -- we
19 have to act with authority. And we've got to deal with
20 people who have actual authority, not just people who
21 happen to be parties to this lawsuit. In a typical
22 lawsuit the parties can settle cases. But this is not a
23 typical lawsuit. This is one of the most sovereign acts
24 of a state which is adopting a redistricting plan.

25 **MR. MOORE:** I hear Your Honor loud and clear.

1 Again, this is Mark Moore. So we will not come back to
2 this Court and ask this Court for any consideration
3 scheduling a fairness hearing or doing a pause of this
4 litigation until and unless we can get those items. And
5 if we can't get them, we can't get them and we'll try this
6 case.

7 JUDGE GERGEL: That's exactly right. And every
8 Court would prefer the parties to figure a way to work it
9 out. In this case, the parties are a little complicated
10 because it's the state itself. And, you know, you've got
11 to satisfy the formalities to authorize the settlement in
12 this situation. And I think y'all know the roadmap.

13 MR. MOORE: I think we do.

14 JUDGE GERGEL: I laid it out to you.

15 MR. MOORE: I think the three of you began to
16 lay it out for us clearly yesterday. Today has been very
17 helpful. We understand what we have to do. And if we can
18 do it, then we'll be back to the Court. If we can't, then
19 we'll be prepared to try this case.

20 It's not -- speaking for the House Defendants,
21 it's not that we don't want to try this case. It's that
22 we thought that a resolution would be fair and just for
23 everyone. And we still believe that. But if we can't get
24 it, and we can't get it in the manner that the Court
25 believes is necessary to consider moving forward to a

1 consent decree, then we'll be prepared to try this case.

2 **JUDGE GERGEL:** I think that's where we are.

3 Mr. Moore, anything further from the defense?

4 **MR. MOORE:** We have nothing further from House
5 Defendants, Your Honor.

6 **JUDGE GERGEL:** Okay.

7 Okay. Judge Heytens, I'll pass it back to you.

8 **JUDGE HEYTENS:** Well, I was just going to say I
9 didn't have anything else.

10 Judge Seymour, do you have anything else?

11 **JUDGE SEYMOUR:** No, I don't have anything else
12 to add. I think it's all been covered.

13 **JUDGE HEYTENS:** Great.

14 With that, then I guess we will recess the
15 hearing. Thank you, everyone, for your time. And we'll
16 look forward to getting back to you on some things that we
17 need to get back to you on and hearing from you on
18 anything you need from us as we proceed forward. Thank
19 you all.

20 **ATTORNEYS IN UNISON:** Thank you.

21 (WHEREUPON, court was adjourned at 1:33 PM)

22 ***

23 I certify that the foregoing is a correct transcript from
24 the record of proceedings in the above-entitled matter.

25 s/Karen E. Martin
Karen E. Martin, RMR, CRR

4/27/2022
Date